

Pension Benefit Guaranty Corporation

§ 4281.43

or its duly authorized representative, that the amendment has been adopted in accordance with this section.

Subpart D—Benefit Suspensions

§ 4281.41 Benefit suspensions.

If the plan sponsor determines that the plan is or is expected to be insolvent for a plan year, the plan sponsor shall suspend benefits to the extent necessary to reduce the benefits to the greater of the resource benefit level or the level of guaranteed benefits.

§ 4281.42 Retroactive payments.

(a) *Erroneous resource benefit level.* If, by the end of a year in which benefits were suspended under § 4281.41, the plan sponsor determines in writing that the plan's available resources in that year could have supported benefit payments above the resource benefit level determined for that year, the plan sponsor may distribute the excess resources to each affected participant and beneficiary who received benefit payments that year on a pro rata basis. The amount distributed to each participant under this paragraph may not exceed the amount that, when added to benefit payments already made, brings the total benefit for the plan year up to the total benefit provided under the plan.

(b) *Benefits paid below resource benefit level.* If, by the end of a plan year in which benefits were suspended under § 4281.41, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level that were unpaid shall be distributed to each affected participant and beneficiary on a pro rata basis to the extent possible, taking into account the plan's total available resources in that year.

§ 4281.43 Notices of insolvency and annual updates.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall issue notices of insolvency to the PBGC and to plan participants and beneficiaries. Once notices of insolvency have been issued to the PBGC and to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall

be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(b) *Requirement of annual updates.* A plan sponsor that has issued notices of insolvency to the PBGC and to plan participants and beneficiaries shall thereafter issue annual updates to the PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued notices of insolvency benefit level in accordance with § 4281.45 for the same insolvency year. A plan sponsor that, after issuing annual updates for a plan year, determines under § 4041A.25(b) that the plan is or may be insolvent for that plan year need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(c) *Notices of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year and that has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year or 30 days after the date of the plan sponsor's determination under § 4041A.25(b).

(e) *Notices of insolvency—method of delivery.* The notices of insolvency shall be delivered by mail or by hand to the